



**U S Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to Public Notice No.

200501438

Issuance Date:

MAY 17, 2007

STREAM: Unnamed Tributary of Smithers Creek

Closing Date: JUNE 18, 2007

(locally known as Rattlesnake Hollow)

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (USACE) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the USACE Regulatory Program.

SECTION 10: The USACE is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The USACE is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Appalachian Fuels
 1500 North Big Run Road
 Ashland, Kentucky, 44102

LOCATION: The proposed project is located at latitude 38-12-22 and longitude 81-14-27 in an unnamed tributary of Smithers Creek (locally known as Rattlesnake Hollow), near Smithers, Fayette County, West Virginia. Smithers Creek is a tributary of the Kanawha River, a navigable (Section 10) water of the United States. The location of the proposed two permanent valley fills and one sediment control pond within waters of the United States (U.S.) is shown on the attached **Exhibit A**.

DESCRIPTION OF THE PROPOSED WORK: The applicant previously submitted a request for authorization under the Nationwide Permits. The applicant's Pre-Construction Notification was submitted to resource agencies by letter dated September 14, 2006. Subsequently, the applicant requested an individual 404 permit authorization for the activities previously proposed (and described herein).

The applicant proposes to impact a total of 12,338 linear feet (LF) of waters of the U.S. in conjunction with the proposed coal mining permit S-3026-05. The attached **Exhibit B** shows the footprints of all proposed activities that would require a Department of the Army permit. The project would include constructing two permanent valley fills, one temporary sediment control pond, and mining through streams within the project area. Constructing valley fill #1 and mining through streams would permanently fill 2,065 feet of ephemeral stream and 5,573 feet of intermittent stream. Constructing valley fill #2 and mining through streams would permanently fill 2,041 feet of intermittent stream and 300 feet of ephemeral stream. Total permanent impacts would be 9,979 feet. The drainage area above the proposed valley fills are 231 acres and 108 acres, respectively.

Temporary sediment pond #1 would be constructed in an unnamed tributary of Smithers Creek and would impact approximately 1,209 feet of intermittent stream (including 180 LF of stream for the embankment fill). Below each valley fill, a temporary Erosion Protection Zone (EPZ) would be constructed, each filling 350 feet of intermittent stream. About 450 feet of intermittent stream would be impacted by transport of sediment between the toe of the EPZ fills and the back of the pond. Total temporary impacts will be 2,359 LF.

The West Virginia Department of Environmental Protection is reviewing the applicant's Surface Mining Permit application (S-3026-05) pursuant to the Surface Mining Control and Reclamation Act of 1977. Details regarding the mining operation can be found in the applicant's Surface Mining Application on file with the WVDEP. The applicant will re-submit an Environmental Information Document to this office for review concerning the environmental impacts that would reasonably be expected to occur as a result of the proposed project.

ALTERNATIVES ANALYSIS: The applicant's stated overall project purpose is to mine coal from the Henshaw, Coalburg, Stockton and 5-Block seams located along an unnamed tributary of Smithers Creek. This project is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the overall purpose. The applicant has provided an alternatives analysis, which is currently being reviewed. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available and practicable to achieve the overall project purpose.

MITIGATION PLAN: The applicant has submitted a compensatory mitigation plan (CMP) to compensate for the proposed impacts to waters of the U.S. regulated by the USACE. To compensate for temporary impacts to intermittent streams, the applicant would restore the streams impacted by the sediment control system and would remove and restore the stream impacted by the two Erosion Protection Zone fills. Stable streams would be restored based on pre-mining conditions, with enhanced physical conditions as determined by baseline and post-mitigation habitat assessments (using EPA's Rapid Bioassessment Protocol).

To compensate for permanent fills in 9,979 feet of streams, the applicant proposes to create and restore a total of 11,900 feet of stream in off-site areas located in Boomer Branch and Blake Branch (as shown in the attached **Exhibit C**). As part of this work, the applicant would improve 3900 LF of ephemeral stream. Additionally, 8,000 feet of presently non-jurisdictional drainageway would be restored to an intermittent stream. A portion of the proposed streams would traverse through a valley fill in Blake Branch and a mined area in Boomer Branch. These streams would be constructed using a stable geomorphologic configuration based on Rosgen stream types and would include construction of in-stream habitat, based on the appropriate stream type, sufficient to offset adverse impacts as a result of the proposed project. The applicant states the locations of proposed off-site streams have sufficient groundwater and surface water drainage area to produce the expected flow regime. The off-site mitigation would be performed prior to or concurrent with the stated fills.

WATER QUALITY CERTIFICATION: An individual Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The USACE has determined the proposed project would not impact historic properties listed on or eligible for listing on the National Register of Historic Places based on the fact any effects would be authorized as part of the WVDEP's permitting process under the SMCRA. This public notice will serve as coordination with the State Historic Preservation Officer concerning any additional information they may have on the project's potential impacts on historic properties listed on or eligible for listing on the National Register of Historic Places.

ENDANGERED/THREATENED SPECIES REVIEW: The proposed project lies within the natural range of the endangered Indiana bat (*Myotis sodalis*) and the Virginia big-eared bat (*Corynorhinus townsendii*). By letter dated July 17, 2006, the USFWS concurred with the applicant's mist net survey and that no federally-listed endangered and threatened species are expected to be impacted by the proposed project. However, by letter dated October 5, 2006, the USFWS stated that recent surveys indicate that the federally-listed endangered fanshell mussel (*Cyprogenia stegaria*) and pink mucket pearly mussel (*Lampsilis abrupta*) may occur between the confluence of Smithers Creek and Boomer Branch with the Kanawha River.


The USACE has determined the proposed project would have no impact on federally listed threatened or endangered species based on the fact any effects would be authorized as part of the WVDEP's permitting process under the SMCRA. This public notice will serve as coordination with the U.S. Fish and Wildlife Service concerning threatened or endangered species. If the Service believes any potential effects to federally listed species would be attributable to the Huntington District's proposed permitting action, it is requested the Service provide any additional information pursuant to Section 7 of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity.

This application will be reviewed in accordance with 33 CFR 320-331, the USACE, and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

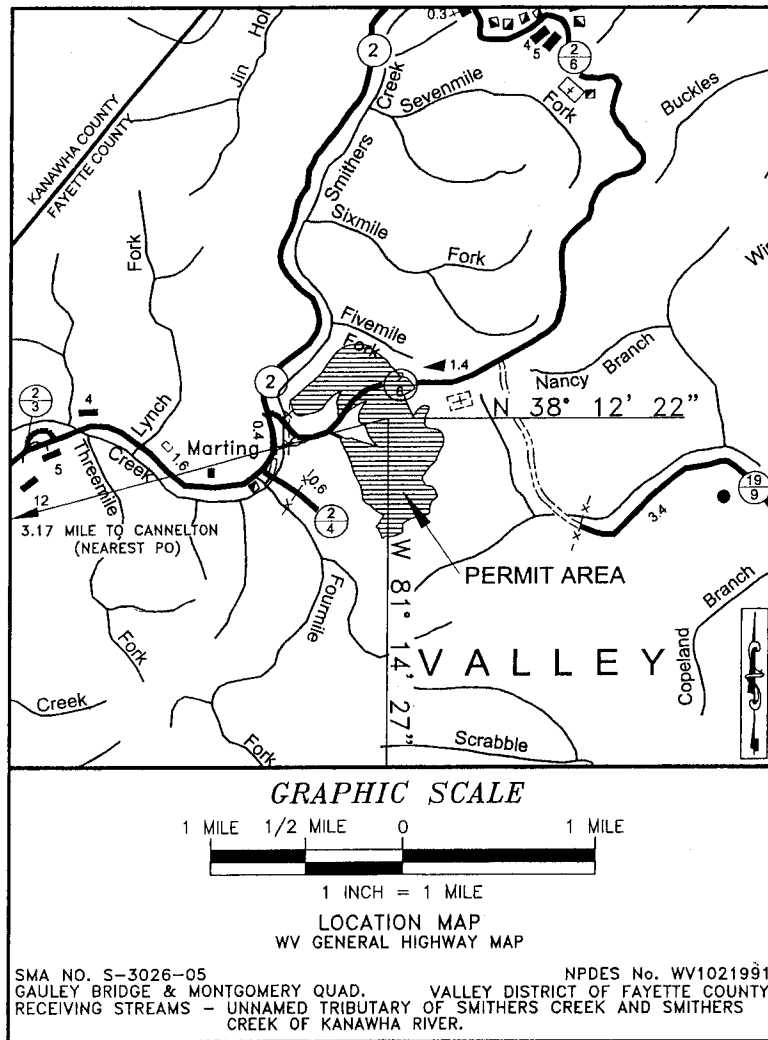
SOLICITATION OF COMMENTS: The USACE is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the USACE to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

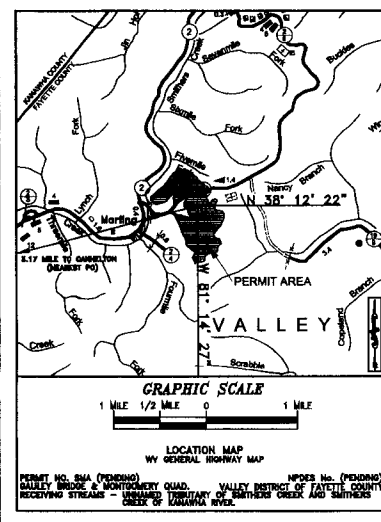
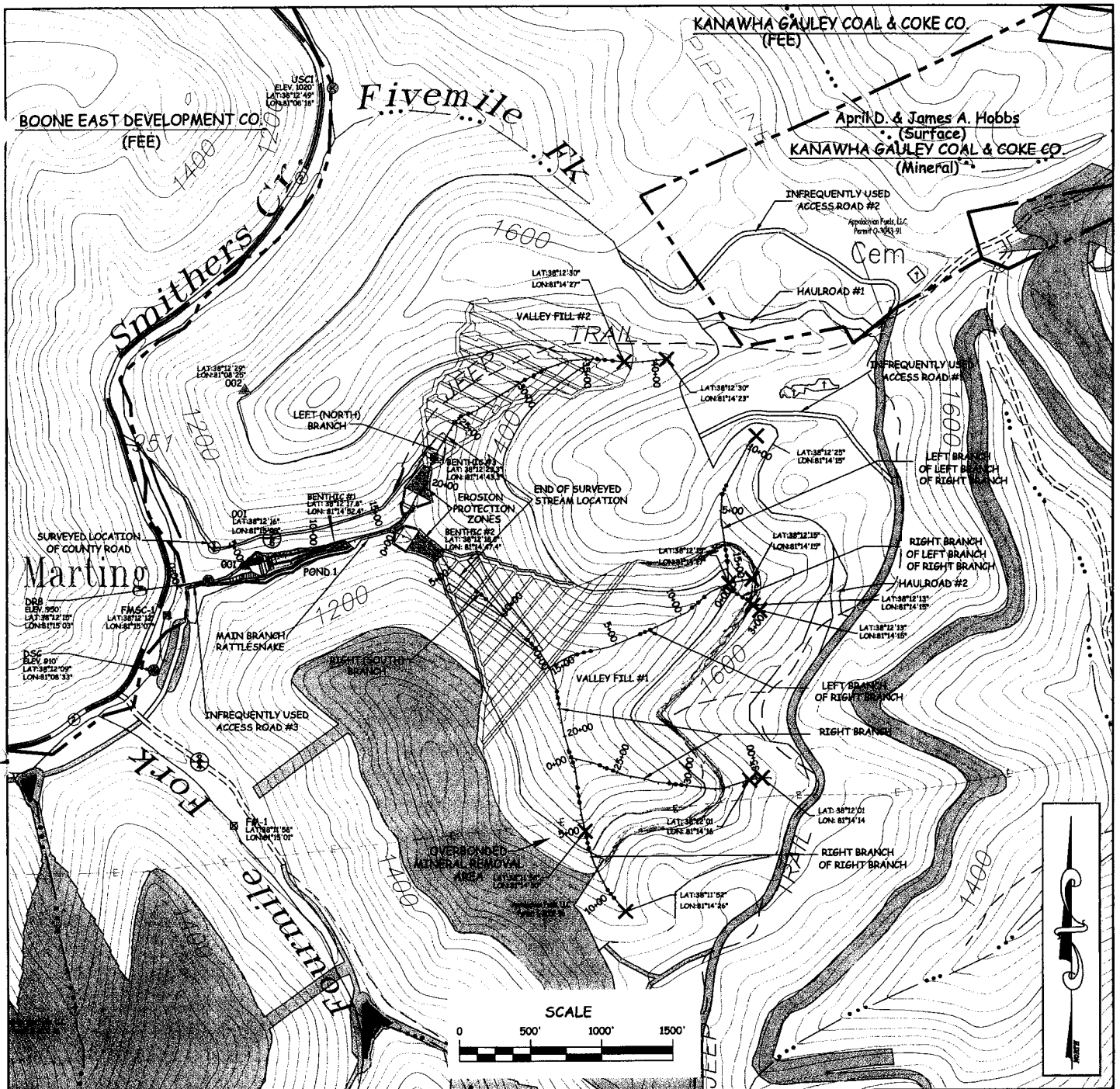
CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Richard Berkes, Regulatory Specialist, South Regulatory Section, CELRH-OR-FS, U. S. Army Corps of Engineers Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please call Richard Berkes of the South Regulatory Section at 304-399-5710.


Ginger Mullins, Chief
Regulatory Branch

(W)

FAYETTE COUNTY HIGHWAY MAP





MAPPING REFERENCE:
BASE MAPPING REPRODUCED FROM U.S.G.S. TOPOGRAPHIC 7.5' QUADRANGLES:
GAULEY BRIDGE, WV: 1969, PHOTOREVISED 1976
MONTGOMERY, WV: 1969, PHOTOREVISED 1976

NOTES:
1. NO WETLANDS TO BE AFFECTED BY THIS OPERATION.

LEGEND

- ▲ NPDES OUTLETS
- NPDES MONITORING SITE
- × INTERMITTENT / EPHEMERAL CONVERSION POINT
- × ORDINARY HIGH WATER MARK
- SURVEYED STREAM LOCATION
- BIOLOGICAL SURVEY STATION

REV.	DATE	DESCRIPTION
1	03/06	1ST TECH CORRECTIONS

I, THE UNDERSIGNED, HEREBY CERTIFY THAT THIS MAP IS CORRECT AND SHOWS TO THE BEST OF MY KNOWLEDGE AND BELIEF ALL THE INFORMATION REQUIRED BY THE SURFACE MINING LAWS OF THIS STATE.

P.E. 10123

STATE OF WEST VIRGINIA
COUNTY OF
TAKEN, SUBSCRIBED AND SWORN TO BEFORE
ME THIS DAY OF 2006.
NOTARY
MY COMMISSION EXPIRES:

APPALACHIAN FUELS, LLC.

1500 Big Run Road
Ashland, KY 41102

PART VI: D.

STREAM DELINEATION MAP

ATTACHMENT P-1
FOURMILE NORTH SURFACE MINE

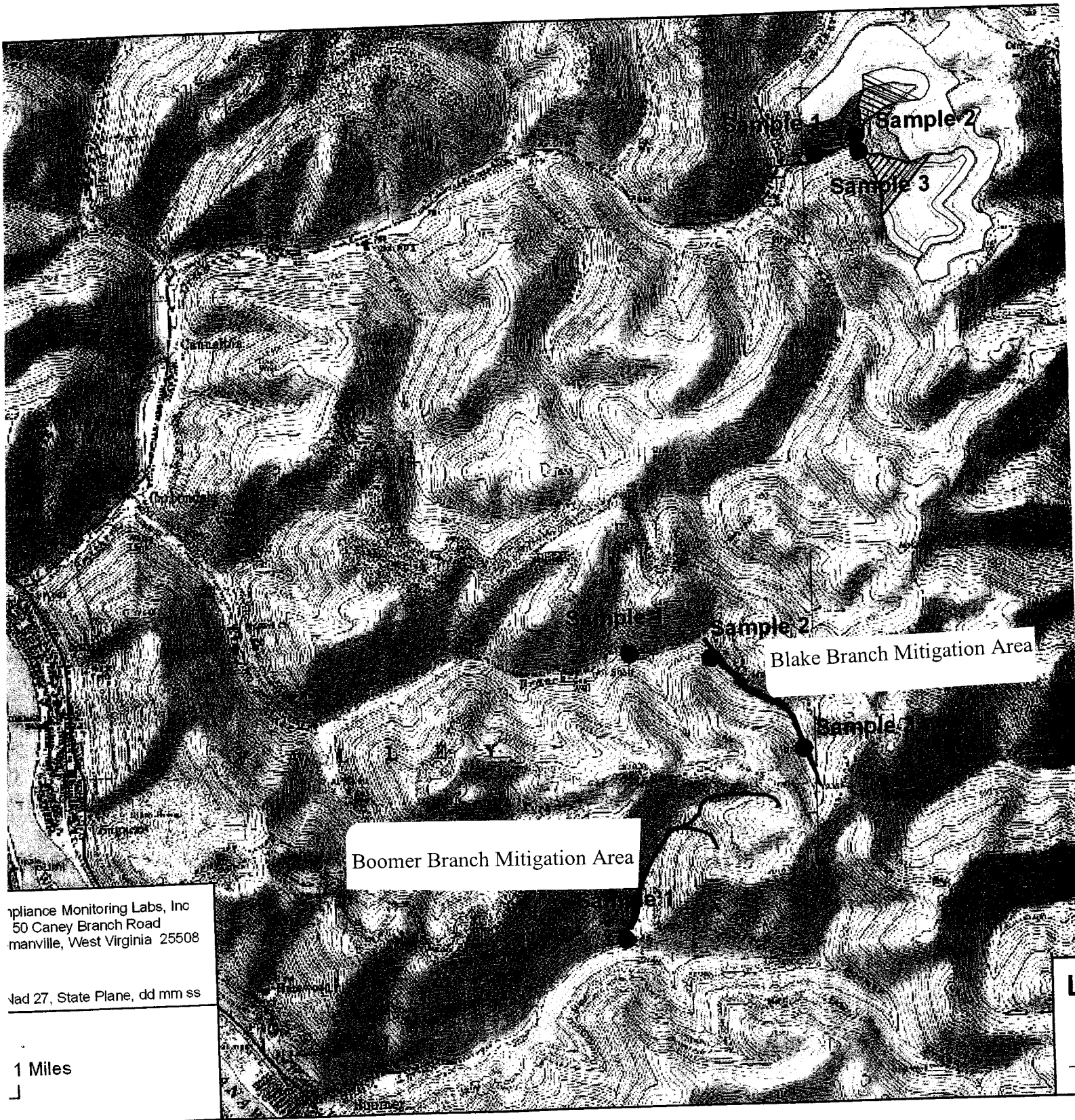
PERMIT NO. S-3026-05

NPDES NO. WV1021991

VALLEY DISTRICT FAYETTE COUNTY
CONTOUR INTERVAL - 40'
MONTGOMERY/GAULEY BRIDGE QUADRANGLE

DATE: 9/28/05
SCALE: AS SHOWN
DRAWING NO. 94-08-018

DRAWN BY: CDB
CHECKED BY: MOT
SHEET NO. 1 OF 1



ations for the proposed impact and mitigation areas.